

U.S. Department of Justice

U.S. FOREIGN
INTELLIGENCE
INVENTAMOR COURT

National Security Division SURVEILLANCE COURT

2014 JUL 30 PM 4:47.

TOP SECRET//SI//NOFORN

Washington, D.C. 20530

LEEANN FLYNN HALL CLERK OF COURT

July 30, 2014

The Honorable Thomas F. Hogan United States Foreign Intelligence Surveillance Court 333 Constitution Avenue, N.W. Washington, D.C. 20001

Re:

(S)—Update Regarding Compliance Incidents Reported in the December 2013, March 2014, and June 2014 Section 702 Quarterly Reports

Dear Judge Hogan:

- (S) On July 17, 2014, representatives from the National Security Division (NSD) met with Court staff to discuss certain compliance incidents reported in the December 2013, March 2014, and June 2014 Section 702 Quarterly Reports. Below is the requested information.
- 1. (S) Facilities That Remain Tasked Pursuant to Section 702 While Questions are Resolved Concerning Documentation and/or Foreignness Issues

(S//NF) There are occasional instances in which the National Security Agency's (NSA) post-tasking checks or NSD's review of tasking sheets reveals a potential issue with the pretasking foreignness checks performed by the analyst. For example, the June 2014 Quarterly Report identified the following issue with respect to



TOP SECRET//SI//NOFORN

Classified by: Tashina Gauhar, Deputy Assistant

Attorney General, NSD, DOJ

Reason:

1.4(c)

Declassify on: 30-July 2039

	(S//NF)	The June 2014 Quarterly Report also identified a similar issue with respect to
	(S//NF)	
:	(S//NF)	
	¹ (S)	

instan justifi was ii	(S//NF) As with any other possible compliance incident, if there is an issue with the pregration of the Government immediately starts to investigate the possible see of non-compliance. If the Government discovers that the pre-tasking foreignness ration was sufficient, that potential incident is closed. If, however, the pre-tasking record complete (a documentation error) or the pre-tasking checks were not properly conducted ing error), the incident will be reported/documented to the Court.	
	(S//NF)	L
2		
2.	(S)	
	(TS//SI/NF)	
² (S)		ı

(S) Subsequent to the June 2014 Quarterly Report, NS	A advised
3. (U) Notification Delays	
(S) NSA's targeting procedures require NSA to report ODNI even if these incidents do not involve noncompliance w Specifically, NSA is required to terminate acquisition and noti	vith the targeting procedures.
	these incidents. The below regarding the notification delays. 14 Quarterly Reports, the in which NSA did not provide During the time periods ection 702 Quarterly Reports, ely, reported to NSD that were experiods covered by the December orts, NSA exceeded the
4. (U) Unauthorized Access to Section 702-Acquired I	Data
(S//NF) On June 17, 2014, in a notice filed with the Co Report, the Government advised the Court of an incident involuted gained access to unminimized Section 702-acquired information. More specifically, NSA reported that on personnel put on an e-mail distribution list that regularly received unminimized specifically.	ving certain NSA personnel who nation without the appropriate, while discussing operational had been
³ (S) For additional context, during the time periods covered by the Decem Quarterly Reports, NSD and ODNI received incident repexample, that of the matters reported to NSD and ODNI during the per Quarterly Report, (80%) were properly reported within the required the	ports, respectively. This means, for riod of time covered by the June 2014

information. Some personnel had not received the appropriate training to permit access to unminimized Section 702 data. As of the June 2014 Quarterly Report, NSA advised that it was difficult to assess the scope of information provided to personnel given the passage of time and NSA also advised, however, that as of sall personnel were removed from the e-mail distribution list. NSA further advised that all personnel have been instructed to delete the relevant e-mails. Given the operational practices of NSA assessed that it is unlikely that personnel further disseminated any unminimized Section 702 data.
(S//NF)—Subsequent to the June 2014 Quarterly Report, and in response to questions from the Court, NSA advised that certain NSA offices supporting targets have an email distribution list for Section 702-trained personnel. NSA employees were inadvertently added to the distribution list in the above incident in approximately December 2012. NSA further advises that although Section 702-trained personnel who were on the distribution list recognized the information as Section 702-acquired, the e-mail distributions in this case did not specifically identify the collection as Section 702. Of the personnel NSA has identified non-Section 702-trained individuals who had access to the e-mail distribution list. All individuals have confirmed that all relevant e-mails have been deleted from their systems. As these individuals advised that they did not read any of the e-mail messages containing unminimized Section 702 information, NSA remains confident that no improper dissemination of the Section 702-acquired data resulted from this incident.
5. (S) Review of Section 702 Collection Without the Use of a Required Review Team
(S//NF) Section III.E.1. of the Minimization Procedures Used by the Federal Bureau of Investigation (FBI) in Connection with Acquisitions of Foreign Intelligence Information Pursuant to Section 702 of the Foreign Intelligence Surveillance Act of 1978, As Amended, requires that FBI "implement procedures that ensure that the target's attorney-client privilege is protected." Specifically, Section III.E.1.a. provides for "[e]stablishment of a review team of one or more monitors and/or reviewers, who have no role in the prosecution of the charged criminal matter, to initially access and review information or communications acquired from a
⁴ (S//NF) The distribution list was developed to encourage collaboration among NSA analysts working similar targets, and was not accessible to non-NSA personnel.
⁵ (U) In the June 2014 notice and Quarterly Report, the Government incorrectly identified this date as
⁶ (S) As noted above, NSA advised that it is difficult to assess the full scope of information provided to personnel including the total number of e-mails received, given the passage of time and

TOP SECRET//SI//NOFORN

⁷ (S)-A Section 702-training analyst recognized the issue in

surveillance or search of a target who is charged with a crime pursuant to the United States Code."

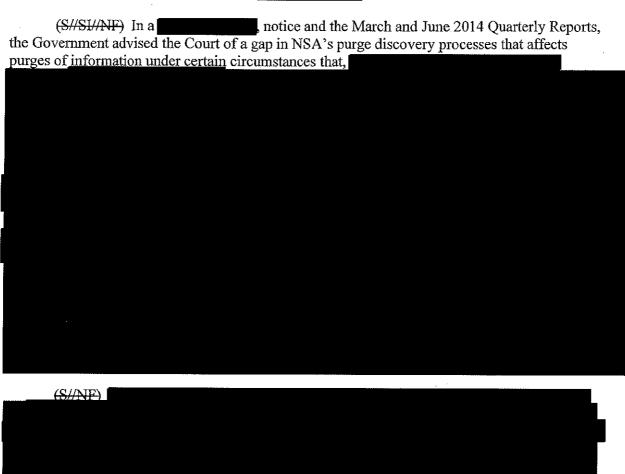
(S//NF) In separate notices, and in the March and June 2014 Quarterly Reports, the	
Government identified in which FBI personnel continued to review	
communications 8 In	
a February notice and the March 2014 Quarterly Report, the Government reported an incident involving accounts. Specifically, the user of	
involving. Specificant, she aset of	
but FBI monitored the	
FBI established the necessary	
(C/NE) In an April 2014 and a result of the 2014 O. (1. D.) (1. C.	
(S//NF) In an April 2014 notice and the June 2014 Quarterly Report, the Government identified a separate incident involving accounts. Specifically, the user of e-mail accounts	
accounts. Specifically, the user of c-mair accounts	
FBI received	
collection from the	_
	ı
(S) FBI currently requires specific training prior to any agent or analyst receiving	
authorization to review raw Section 702-acquired communications. This training includes a full	
discussion of the Section 702 minimization procedures, including attorney-client	
communications, and FBI's policy guide. In addition to this training, NSD conducts reviews at	
approximately 31 FBI field offices each year. As part of those reviews, NSD lawyers provide	
⁸ (S) There have been additional, subsequent instances of this type of compliance incident.	
(e) There have been accompanied, subsequent instances of this type of compilation including.	

additional training on Section 702 issues, and specifically address possible attorney-client issues. Finally, whenever any compliance incident arises, FBI ensures that the relevant personnel receive the necessary reminders. While there have been isolated instances in which FBI personnel have not established the necessary review teams, the Government believes that these were the result of individual failures or confusion and not a systematic issue. NSD and FBI will continue to provide training on the attorney-client communication provisions of the minimization procedures.

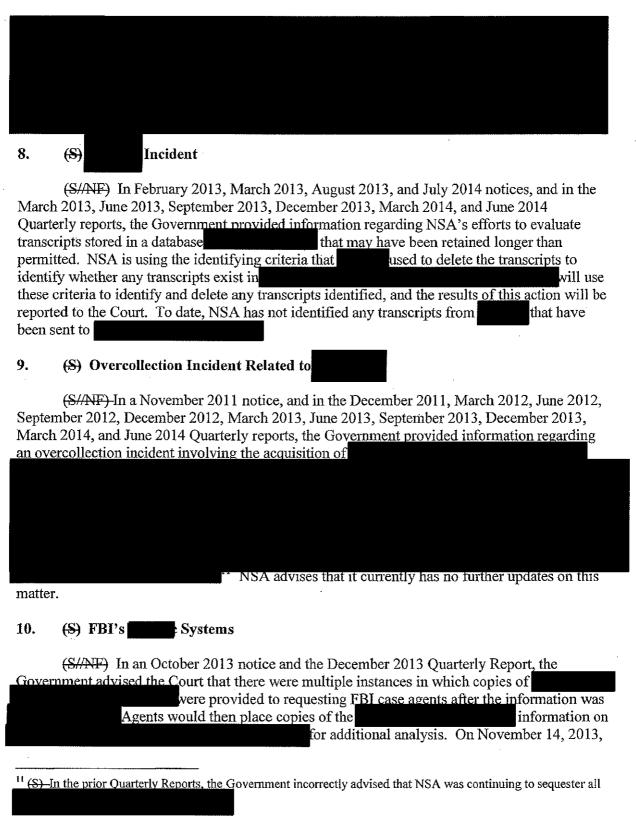
6. (U) FBI Incomplete Purges

(S//NF) In a May 7, 2014, notice and the June 2014 Quarterly Report, the Government advised the Court of when FISA-acquired information has been The Court requested additional information on this matter during the July 17, 2014 meeting, and the Government filed a supplemental notice with the Court on July 25, 2014, that provides additional information on this issue.

7. (S) NSA Incomplete Purges of



TOP SECRET//SI//NOFORN



the Attorney General and Director of National Intelligence approved amended certifications which included amended minimization procedures for FBI that permit FBI to process and retain raw Section 702-acquired information, subject to certain conditions and restrictions.

The Court approved these minimization procedures on December 13, 2013.

(S//NF) According to Section IV.B.2 of these amended procedures:

The FBI will implement procedures regarding storage of FISA-acquired information in an addatabase, which will require the FBI to (1) maintain adequate records of all persons who have been granted access to FISA-acquired information in an ad hoc database, (2) track the FISA-acquired information in an ad hoc database that has been determined to be foreign intelligence information, necessary to understand foreign intelligence information or assess its importance, or evidence of a crime, and (3) maintain adequate records to ensure FBI can comply with the destruction requirement discussed in subparagraph B. 1. of this section.

The FBI adopted the procedures required by this section as of February 25, 2014.

(U) NSA and FBI have verified the accuracy of the relevant information in this letter.

Respectfully submitted,

Kevin J. O'Connor

Chief, Oversight Section

Office of Intelligence, NSD

U.S. Department of Justice